

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)	
)	
AMERICAN INTERNATIONAL COLLEGE)	Facility ID No. 1749
)	NAL/Acct. No. MB-201441410032
For Renewal of License for)	FRN: 0003626363
Station WAIC(FM))	File No. BRED-20140328AAR
Springfield, Massachusetts)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: October 24, 2014**Released: October 24, 2014**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau ("Bureau") has before it the application of American International College ("Licensee"), as amended,¹ for renewal of its license ("Application") for non-commercial educational ("NCE") Station WAIC(FM), Springfield, Massachusetts ("Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL"),² we find that Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules³ by failing to timely file its license renewal application, and Section 73.3527 of the Rules⁴ by failing to retain all required documentation in the Station's public inspection file. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of thirteen thousand five hundred dollars (\$13,500), and that the captioned renewal application should be granted for a period of four years instead of a full term of eight years.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁵ An application for renewal of WAIC(FM)'s license should have been filed by December 1, 2013, four months prior to the Station's April 1, 2014, license expiration date,⁶ but was not. Here, Licensee filed the Application on March 28, 2014, three days before the Station's license expired, but after the application was due. Licensee acknowledges that it did not

¹ On July 2, 2014, Licensee amended the application.

² This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended ("Act"), and Section 1.80 of the Commission's rules ("Rules"). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 C.F.R. § 73.3527.

⁵ 47 C.F.R. § 73.3539(a).

⁶ See 47 C.F.R. §§ 73.1020, 73.3539(a).

timely file the Application, but has since “retained Communications counsel . . . and has designated a senior faculty administrator to ensure that WAIC meets FCC regulatory requirements in the future.”⁷

3. Additionally, Section 73.3527 of the Rules requires an NCE licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information about the station at regular intervals throughout the license period.⁸ Among the materials required for inclusion in the file are the station’s quarterly issues/programs lists, which must be retained until final Commission action on the station’s next license renewal application.⁹

4. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3527 has been placed in the station’s public inspection file at the appropriate times. In the initial Application filing Licensee answered “No” to that certification, but in an amendment to the Application Licensee changed its certification to “Yes”, but did not explain the basis for this change.¹⁰ In the Application, as amended, Licensee attached an Exhibit stating, in pertinent part, that:

Until 2011, WAIC was a student-run station supervised by a faculty member of the licensee. After the supervising faculty resigned, the licensee entered into an agreement with Connecticut Public Broadcasting, Inc. (“CPBI”), whereby WAIC would rebroadcast programming provided by CPBI

In December 2013 WAIC was inspected by . . . a consulting service . . . [which] found deficiencies in WAIC’s local public file, but the deficiencies were not made known to the Licensee until March 2014 The principal defect was the absence of issues/programs lists.

Since filing the WAIC Renewal Application, the Licensee has worked diligently to repair the local public file and reconstruct issues/programs lists, based on programming provided by CPBI. As of the filing of this amendment, WAIC has recreated complete issues/programs lists dating back to the 2011 agreement with CPBI. The Public File now contains all issues/programs lists between July 1, 2011, and the present. For the periods when WAIC was a student-run station, the Station has made available all the records it possesses, which consists of the daily logs for programming on WAIC dating back to 2007.

Although the Licensee recognizes that there were deficiencies in their record keeping procedures, it urges the Commission to consider the remedial efforts the licensee has completed as well as its status as a former student station.¹¹

III. DISCUSSION

5. *Proposed Forfeiture. Section 73.3539 Violation.* In light of the filing date of the Station’s application for renewal, it is beyond dispute that the Application was not timely filed. Furthermore, Licensee failed to provide an adequate explanation for its late filing. We will not excuse the

⁷ Application, as amended, Exhibit 1.

⁸ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

⁹ See 47 C.F.R. § 73.3527(e)(8).

¹⁰ The amendment stated that it was “filed to amend Section III, Question 3 and remove Exhibit 12.” Application, as amended, Exhibit 1.

¹¹ *Id.*

violation, because licensees are responsible for the timely submission of required forms, and untimely renewal applications disrupt the orderly processing of renewal applications orchestrated by the staggering of license renewal terms in Section 73.1020 of the Rules.¹²

6. Section 73.3527 Violation. As Licensee has acknowledged, at the time of the filing of the Station's license renewal application, and during the entire license term, the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3527 of the Rules. In particular, Licensee failed to place in the Station's public file any issues and programs lists for the entire license term, and as such the public file was not in compliance with Section 73.3527(e)(8). Additionally, in this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.¹³

7. Under Section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁴ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁵ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁶ and the Commission has so interpreted the term in the Section 503(b) context.¹⁷ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹⁸

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form and of \$10,000 for violation of Section 73.3527.¹⁹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁰ We further note, as Licensee acknowledges, that after 2011 the Station ceased to be a student-

¹² 47 C.F.R. § 73.1020.

¹³ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

¹⁴ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁷ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁸ 47 U.S.C. § 312(f)(2).

¹⁹ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section I.

²⁰ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(8).

run station. Therefore, Licensee is not eligible for the student-run station policy announced in *William Penn University*.²¹

9. In this case, the Licensee failed to timely file the Station renewal application. Also, although it admitted to the public file rule violations, it did so only in the context of the question contained in its captioned license renewal application that compelled such disclosure. Moreover, the violations were extensive, occurring for the whole period of the license term and involving 32 late-filed and/or missing issues/programs lists.²² Considering the record as a whole, we believe that a forfeiture of \$1,500 for the late application filing and \$12,000 for the public file violations, is appropriate in this case. Accordingly, we find that the Licensee is apparently liable for a total proposed forfeiture in the amount of \$13,500.

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²³ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²⁵

11. It is clear to us that Licensee's conduct has fallen far short of the standard of compliance with the Act and the Rules that would warrant a routine license renewal. Licensee apparently failed to timely prepare and file 32 issues/programs list for the eight-year license period. The issues/programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.²⁶ The Commission's public information file rule also safeguards the public's ability to assess the station's service and to meaningfully participate in the station's renewal process, and ensure the station's accessibility to and nexus with its community, to serve and respond to community programming needs.²⁷ As such, the public information requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations.

²¹ Policy Statement and Order, 28 FCC Rcd 6932 (MB 2013). In *William Penn University*, the Bureau announced that in cases of “first-time violations of certain documentation requirements of our Rules by student-run NCE radio stations . . . will [be afforded] . . . an opportunity to negotiate a consent decree in which the licensee agree to a compliance plan and makes a voluntary contribution to the United States Treasury.” This Policy Statement, however, is strictly limited to Stations defined as student-run *i.e.* “managed and programmed entirely by student volunteer staff and not by paid professional staff other than the faculty adviser.” *Id.* at 6937. Licensee concedes that the Station has not been a student-run station for a number of years.

²² Although AIC reported in a July 2, 2014, amendment that it had reconstructed and placed in the public file all issues/programs lists from July 1, 2011, through the present, Section 73.3527(e)(8) states, in part: “[t]he list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter”

²³ 47 U.S.C. § 309(k).

²⁴ 47 U.S.C. § 309(k)(1).

²⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁶ See *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365 (1989).

²⁷ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

12. We believe that Licensee's violation of Section 73.3527 at the Station was a "serious" violation,²⁸ as it denied both the public and the Commission any opportunity to review and comment on the Station's programming during the much of the past license term. The record here further indicates that Licensee's willful and repeated violations of Section 73.3527 at the Station, when considered together and coupled with the late-filing of the Application, constitutes a pattern of abuse over a period of years by Licensee at the Station.²⁹ However, although we are concerned with Licensee's cavalier attitude toward creating and retaining the quarterly issues/programs lists, we find that Licensee's violations of the Rules do not rise to such a level that designation for evidentiary hearing on the issue of whether to deny renewal for the Station is warranted. Importantly, the record establishes that Licensee has established procedures to ensure that issues/programs lists are timely prepared and filed each quarter going forward.³⁰

13. Nevertheless, we believe that additional measures are necessary in order to ensure that the Station is operated in compliance with the Act and the Rules in the future and that Licensee provides accurate responses to items in application forms. Accordingly, pursuant to Section 309(k)(2) of the Act, we will grant the renewal application by separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than the apparent violations that would preclude grant of the application. The new license term will be limited to a period of four years.³¹ This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the Rules and to take whatever corrective actions, if any, may be warranted at that time.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that American International College is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand five hundred dollars (\$13,500) for its apparent willful and repeated violations of Section 73.3527 of the Commission's Rules.

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, American International College, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the proposed forfeiture must be made by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (callsign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send

²⁸ See 47 U.S.C. § 309(k)(1)(b).

²⁹ See 47 U.S.C. § 309(k)(1)(c).

³⁰ Application, Exhibit 1. Based on these recent efforts, we do not find that Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

³¹ See, e.g., *Gallup Public Radio*, Memorandum Opinion and Order and Notice of Apparent Liability, 28 FCC Rcd 13847 (MB 2013) (*NAL* proposed a four-year renewal term and a \$12,000 forfeiture where licensee failed to prepare 21 issues/programs lists during the license term).

electronic notification on the date said payment is made to Penelope Dade at Penelope.Dade@FCC.GOV and Kim Varner at Kim.Varner@FCC.GOV. Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.³²

20. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to American International College, 1000 State Street, Springfield, MA 01109-3155, and to its counsel, John Crigler, Esq., Garvey Schubert Barer, 1000 Potomac Street, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

³² See 47 C.F.R. § 1.1914.